

COUNCIL MEETING

NOVEMBER 2, 2016

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Chair Mel Rapozo at the Council Chambers, 4396 Rice Street, Suite 201, Lihue, Kaua'i, on Wednesday, November 2, 2016 at 8:36 a.m., after which the following Members answered the call of the roll:

Honorable Mason K. Chock
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable Arryl Kaneshiro
Honorable KipuKai Kualii
Honorable JoAnn A. Yukimura
Honorable Mel Rapozo

APPROVAL OF AGENDA.

Councilmember Kualii moved for approval of the agenda as circulated, seconded by Councilmember Kaneshiro, and unanimously carried.

MINUTES of the following meeting of the Council:

October 5, 2016 Council Meeting

Councilmember Kualii moved to approve the Minutes as circulated, seconded by Councilmember Kaneshiro, and unanimously carried.

Council Chair Rapozo: Before we get to the Consent Calendar, there is a request by Mr. Mickens to speak on C 2016-233, so I would ask for a motion to receive the Consent Calendar, except for C 2016-233.

CONSENT CALENDAR:

C 2016-231 Communication (10/10/2016) from the Director of Finance, transmitting for Council information, the First Quarter Statement of Equipment Purchases for Fiscal Year 2016-2017, pursuant to Section 17 of Ordinance No. B-2016-812, the Operating Budget of the County of Kaua'i for Fiscal Year 2016-2017: Councilmember Kagawa moved to receive C 2016-231 for the record, seconded by Councilmember Kualii, and unanimously carried.

C 2016-232 Communication (10/19/2016) from Councilmember Kaneshiro, providing written disclosure of a possible conflict of interest and recusal regarding C 2016-212, C 2016-222, and Resolution No. 2016-62, relating to an Intergovernmental Agreement with the State Of Hawai'i, Department Of Health for a loan from the State Water Pollution Control Revolving Fund for the Hanamā'ulu and Kapaia Sewage Pump Stations (SPS) Renovations, Project No. C150059-23, as these items involve a "Wastewater Facilities Cost-Share Agreement between Ha'ili Moe, Inc. and County of Kaua'i," which provides for a public-private

partnership between his employer, Grove Farm Company, Inc., and the County for renovation to the County's existing Hanamā'ulu and Kapaia SPS, as he is employed by Grove Farm Company, Inc. as a Project Manager: Councilmember Kagawa moved to receive C 2016-232 for the record, seconded by Councilmember Kualii, and unanimously carried.

Councilmember Kualii moved to take C 2016-233 off of the Consent Calendar, seconded by Councilmember Kaneshiro.

COMMUNICATIONS:

C 2016-233 Communication (10/24/2016) from Councilmember Yukimura, transmitting for Council consideration, a Resolution Amending Resolution No. 2015-02, Draft 1, And Resolution No. 2015-62, Relating To The Rules Of The Council Of The County Of Kaua'i For The Organization Of Committees And The Transaction Of Business, which proposes the following:

- Allows Councilmembers to speak up to a total of six (6) minutes on the same agenda item;
- Removes the limitation which allows Councilmembers not more than twice to speak on the same questions without leave of the Presiding Officer, subject to the body;
- Allows any person with time constraints to speak at the beginning of the agenda on any agenda item;
- Allows Councilmembers to ask clarifying questions relating to the testimony being given;
- Allows Councilmembers to ask clarifying questions of a person giving testimony during a public hearing; and
- Allows a period for public speaking at the beginning of the meeting agenda.

Councilmember Kualii moved to receive C 2016-233 for the record, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Councilmember Kagawa.

Councilmember Kagawa: Yes, I just have a process question. We have the Resolution coming up that relates to the communication, so if Glenn speaks now, will he be allowed to speak again when the Resolution comes up? It does not look like it is going to take a long time before the item comes up.

Council Chair Rapozo: Right. As we do, the testimony for the communication will be considered the testimony compiled with the discussion on the Resolution. This is for people who cannot stay, and I know that today is the great seventh game of the Major League Baseball World Series, so I am assuming that Mr. Mickens will not be around at 1:00 p.m. Yes, his testimony this morning will be carried over to the Resolution, so this is his opportunity to speak on the matter.

Councilmember Kagawa: Thank you.

Council Chair Rapozo: Okay. Any other discussion before I suspend the rules? If not, the rules are suspended. Mr. Mickens.

There being no objections, the rules were suspended to take public testimony.

GLENN MICKENS: For the record, Glenn Mickens. Thank you, Chair Rapozo. Since the biggest game of the day is coming up, I want to make sure that I get this in. From the Executive Session, I do not think there is going to be that much going on, but I wanted to make sure. You have a copy of my testimony, so hopefully you can read it with me. I have no problem with Councilmember Yukimura introducing C 2016-233, as I am sure she is sincere in her beliefs. However, this Council, under the leadership of Chair Rapozo, set the Rules of the Council for the Organization of Committees and the Transaction of Business, and for me, they have worked well. I compliment Chair Rapozo for giving the public a lot of latitude in their testimonies on various issues without continuously stopping them for being off agenda, as was done in the past. I would strongly suggest that an amendment be made to the rules that mandate that the testifier be given an answer or some response to their testimonies. In some very rare instances, a Councilmember has recalled the original speaker to respond to a question, which if consistently done, would do what I am suggesting. But unless this is consistently done, the public needs a written or verbal answer from one (1) or all Councilmembers. If nothing else, the Council owes the public testifier the courtesy of at least acknowledging their being at the meeting and speaking and giving them an answer. As one glaring example, I have testified and brought evidence—Chair Rapozo and Councilmember Yukimura, I think you remember this—for fifteen (15) years of fraudulent action taking place on the repaving of our roads; getting less asphalt concrete laid down than we are paying for. But no one on the many Councils or the Administration ever responded to my concerns, nor were answers forthcoming. Yes, various members and administrators did meet me at different sites and agreed that my concerns were well-taken, but nothing happened. Should public hearings not only be held for the Council to hear the public's concerns and opinions, but at some time to give them answers? The rules state that these hearings are for gathering information and listening to the people, but when does action ever take place? Whether a citizen is right or wrong in the content of their testimony, they certainly deserve the courtesy of knowing that they are being heard and a reply should be forthcoming. That is the only thing that I would ask for the rules to be changed. Chair Rapozo, like you said, many times the Administration gives testimony and then hears public testimony, so they come back up to respond. If that is consistent, there is no problem. That is exactly it.

Council Chair Rapozo: Thank you, Glenn.

Mr. Mickens: Thank you very much.

Council Chair Rapozo: Ms. Punohu? She said that she will reserve her testimony for when the actual Resolution comes up. Thank you. Anyone else wishing to speak on this item? If not, I will call the meeting back to order. Any further discussion?

There being no further testimony, the meeting was called back to order, and proceeded as follows:

The motion to receive C 2016-233 for the record was then put, and unanimously carried.

C 2016-234 Communication (09/30/2016) from the Director of Economic Development, requesting Council approval to receive and expend funds, in the amount of \$70,000.00, and indemnify the Hawai'i Tourism Authority, to provide technical assistance for the revised Community Enrichment Program (CEP) (formerly known as CPEP), the Aloha Aina Program (formerly known as the Natural Resources Program), and the Kukulua Ola Program, to include, but not limited to, technical and non-substantive guidance for Kaua'i applicants wanting to respond to Request for Proposals (RFP); assist in the promotion of the programs; identify and recruit new applicants; provide a work plan for evaluation of the programs including timelines; provide final evaluations for each event or project; provide monthly evaluation reports; and complete final reports: Councilmember Kualii moved to approve C 2016-234, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Public testimony?

The motion to approve C 2016-234 was then put, and unanimously carried.

Council Chair Rapozo: Motion carried. Next item.

C 2016-235 Communication (10/05/2016) from the Fire Chief, requesting Council approval to accept a donation from the Kaua'i Lifeguard Association (KLA), for a total value of \$43,717.74, of one (1) 2016 Dodge Ram 4x4 Pickup Truck (\$40,470.93), one (1) Pipe Rack (\$749.95), and one (1) Light Bar (\$2,496.86), to be utilized by the Ocean Safety Bureau East District roving patrol unit: Councilmember Kualii moved to approve C 2016-235 with a thank-you letter to follow, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Public testimony?

The motion to approve C 2016-235 with a thank-you letter to follow was then put, and unanimously carried.

Council Chair Rapozo: Motion carried. Next item.

JADE K. FOUNTAIN-TANIGAWA, County Clerk: Chair, on page 3, we have two (2) items that we need to convene first in Executive Session. Following that, we have the Claims.

There being no objections, C 2016-238 and C 2016-239 were taken out of order.

CLAIMS:

C 2016-238 Communication (10/20/2016) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Bacon Universal Company Inc., for damage to their equipment, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kualii moved to refer C 2016-238 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Kaneshiro.

C 2016-239 Communication (10/20/2016) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Wendell Gabriel, Jr., for property damage, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Kualii moved to refer C 2016-239 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any discussion? Public testimony?

The motion to refer C 2016-238 and C 2016-239 to the County Attorney's Office for disposition and/or report back to the Council was then put, and unanimously carried.

Council Chair Rapozo: Motion carried. Next item, please.

RESOLUTION:

Resolution No. 2016-78 – RESOLUTION AMENDING RESOLUTION NO. 2015-02, DRAFT 1, AND RESOLUTION NO. 2015-62, RELATING TO THE RULES OF THE COUNCIL OF THE COUNTY OF KAUAI FOR THE ORGANIZATION OF COMMITTEES AND THE TRANSACTION OF BUSINESS: Councilmember Yukimura moved to approve Resolution No. 2016-78, seconded by Councilmember Chock.

Council Chair Rapozo: Councilmember Yukimura.

Councilmember Yukimura: Thank you. I want to thank Council Chair Rapozo for allowing this matter to be placed on the agenda. I prepared a lengthy presentation on this issue because it is very important, but I see now that the timing is not right. So after public testimony and if there is any discussion, I will move to receive this. Perhaps, there will be another time, hopefully not at the Inauguration, but rather when the issue can be fully vetted. I want to thank all who have submitted and will submit testimony on both sides of the issue.

Council Chair Rapozo: Further discussion? Councilmember Kagawa.

Councilmember Kagawa: I want to thank Councilmember Yukimura for withdrawing this. I thought that the timing was terrible, and I think the leadership has been a good change. Everybody has a point of view. She may not believe that the leadership has been good. I was not happy with the leadership when myself and Council Chair Rapozo was on the bottom of a 2:5 majority on this Council, but I did not try to change the rules. I just tried to state my platform. Thankfully, we got two (2) new members, Councilmember Kaneshiro and Councilmember Kualii, and we changed the rules to fit what we felt was a better working Council. The result is what we have here. I think we have a Council that tries to be fair and tries to keep unnecessary debate going on when there should be questions being asked, and those kinds of things. I am proud of this Council. This Council has not passed bills, such as Bill No. 2491. With the leadership of former Chair Furfaro, that got passed. We have not passed those types of bills that are invalid. This Council has stopped unnecessary "barking dog" laws that were 0-7 in court. So I am proud of this Council, proud of this leadership, and while some

members may not be happy, that is the way it works. I was not happy three (3) to four (4) years ago, but I believe that the system we have now is working and we will see on Tuesday how the people feel. Thank you.

Council Chair Rapozo: Councilmember Hooser.

Councilmember Hooser: Are we giving our speeches now or after the public testimony?

Council Chair Rapozo: You can speak now. It counts towards your time.

Councilmember Hooser: So is it five (5) minutes now? If we speak now, is that going to be credited towards the five (5) minutes?

Council Chair Rapozo: Yes.

Councilmember Hooser: Okay. I will hold my remarks. Thank you.

Council Chair Rapozo: Thank you. Any other discussion? If not, I will go ahead and suspend the rules. Do we have registered speakers?

Ms. Fountain-Tanigawa: Yes. The first registered speaker is Anne Punohu.

There being no objections, the rules were suspended to take public testimony.

ANNE PUNOHU: *Aloha* everyone. My name is Anne Punohu. I have pro and con opinions on this issue. Councilmember Kagawa, there is always going to be a "Bill No. 2491" in this room. That is not going to stop. We are always going to have contentious issues here in this room. I think for me, I see two (2) sides. I think that under Council Chair Rapozo's leadership, things have gone a lot quicker and faster; however, I also want to support Councilmember Yukimura on the fact of discovery. Also, as a testifier, I often feel that nobody ever asks me a question. I think that I am trying to make good observations and state my opinion, but nobody ever asks me about that opinion or nobody ever follows...not privately, because I can always approach you folks because this is a very approachable Council, but that is not what I am talking about. I am talking about that sometimes when you testify you want to be asked a question. But I do feel that there should be a compromise there; I feel that there should be a limit on how many questions can be asked and that the question has to be relevant and that it is not a court of law where you can try and lead somebody into a direction. That is where I feel it is inappropriate. But I feel that there are legitimate lines of questioning that should be asked and be able to be asked for all of your opinion. As you are doing a job of a Councilmember, that should be your job to have an opportunity for discovery. I think that maybe that is a compromise that can be looked at. However, I do feel that when you start to have a lengthy back and forth, that is when you start to have a very long meeting that stretches to nineteen (19) hours, and of course I was in the room for Bill No. 2491, but it was very necessary and issues like that, like was said, and I am going to repeat myself, will happen. This is not going to stop the general public from packing this room and everybody wanting a chance at the microphone. However, for me, I feel that it is very important for me to be

able to split my testimony between three (3) minutes and three (3) minutes because things change. You say things, and then people get up and they say stuff, so I will have something to say. I think that is the same way that you folks have two (2) times to speak, but I also think that you should have an opportunity to ask a question, as long as it is relevant, it does not lead somebody down a path, and you are staying on course and the meeting can still flow and go quickly. *Mahalo*.

Council Chair Rapozo: Thank you. Anyone else registered to speak?

Ms. Fountain-Tanigawa: There are no further registered speakers.

Council Chair Rapozo: Mr. Taylor.

KEN TAYLOR: Chair and Members of the Council, my name is Ken Taylor. I want to remind each and every one of you that it is government by the people, for the people. When we elect you folks, we put you in place to be the stewards of our government. We do not relinquish the right of government by the people, for the people. We only ask you to be the stewards to move forward. Four (4) to five (5) years ago, one of you Councilmembers approached me during the morning break and said, "One of the reasons we do not always agree on issues is that I, as a Councilmember, am privy to more information than you have." I am saying that if there is information out there that I do not have or any other member of the public does not have, then you are not doing the job that you are here to do. It is your responsibility to make sure that each and every one of the public members has all of the information. That is your job. Often times, when things got bogged down, it is because all of the information is not available. There should not be any item on the agenda that does not have all of the information when the agenda is published. It is easy to do and it is done in other municipalities all over the country, but we are still working in a third-world environment that is, "Well, we cannot have it because they were not ready." If they are not ready on the day they have submitted for the agenda, then it does not go on the agenda. Once they are refused a couple of times, the problem will get solved real quickly. You have a right to ask questions and we have a right to expect you to respond to our requests. I think it is important that the community knows and understands where you stand on an issue. If it is not completely discussed, then nobody knows what you are thinking or why you are doing what you are doing. I am going to wait for my next three (3) minutes to continue since my first three (3) minutes done. Thank you.

Council Chair Rapozo: Anyone else? Mr. Hart.

BRUCE HART: For the record, Bruce Hart. I have come to care about every person on this Council, and through this medium, I have come to care more about the community of Kaua'i than I ever have and I have lived here for forty-two (42) years. I have come to see how government works and I have had to adjust a lot of the beliefs that I have held about government my whole life because I participated here. So I really appreciate the fact that this body is available to the public. There is validity on both sides, as Anne said, but Councilmember Kagawa said...I think the public, or at least what I have come to understand, is that we elect all of you. If we wanted a complete hands-on government where everyone participated, it would be chaos. You represent us and I think that you all know that we, the public, have a right to hold you accountable. But you also have a right to vote your conscience. When I sit in this chair, every opinion I give, I take seriously,

because I know that people are watching. I have spent the last nineteen (19) years in the Christian church and this leadership is more accessible than most of the leadership I have found in church. I do not like having to say that, but it is true. How many times have I said that we all need to work together? That is something that I know from my Christian studies, but it is something that I know out of life that if we do not work together, our nation is in trouble, serious trouble. It trickles down to this County. So let us please work in unity. Thank you.

Council Chair Rapozo:

Thank you, Bruce. Anyone else?

RICHARD STILLMAN: Richard Stillman, for the record. As I recall, the curtailing of the questions came about because we wanted to encourage more public testimony. I believe that is why you introduced it, Council Chair. I am kind of against curtailing spontaneous questions, so right off the bat I will tell you that. But my question is, it has been a year since the rule change...in fact, a little over a year...I think it was October 21st when the rule was adopted, and I am wondering has there been any actual data that shows us how many more unique members of the public have come and testified. I just identified myself for the record, so I am assuming that somebody keeps a log of all of the people who testify and you could go back several years where the rules were such that people could get badgered or whatever and see how many of them showed up, versus how many have showed up now with the new, relaxed atmosphere, which I do not feel relaxed, and it does not make a difference that you are or are not going to ask me any questions. This is nerve-wracking. Research shows that people are more afraid of public speaking than they are of death and you can even hear my voice shaking. Anyway, my question will stand—has there been any data kept to prove whether or not the rule change that keeps people from getting badgered has made an impact on getting more people out here? Because to me, it seems like it has not. It seems like if anything, there is maybe more apathy, but that would be an anecdotal assessment of mine and I am looking for some facts. I believe someone raised it here, talking about when you did have a lot of public testimony when there was the Genetically Modified Organisms (GMO) Bill and Barking Dog Ordinance. It was amazing. Somebody brought it up here today. During those hearings, you have overwhelming amounts of people and it seemed like they did not care if they were going to get badgered or whatever. Thank you.

Council Chair Rapozo:
Second time?

Thank you. Anyone else for the first time?

Ms. Punohu: Anne Punohu. This is a good process. I know that Councilmember Yukimura said that she had a lengthy presentation, and it was mentioned in the newspaper that this was being pulled because of the election and the campaign. Councilmember Kagawa and Council Chair Rapozo said, "Let us not do this because we should wait for the next Council." Well, if there are new members of the next Council, they have not lived through what you folks have lived through. I just feel that there is a potential...suppose we do not have the fabulous Chair, Chair Rapozo, and suppose it is somebody else who is not like Council Chair Rapozo, and suppose there is an opportunity to abuse by using the rules as they stand now to silence a Councilmember in order to stifle discussion. I think, like I always testify, let us look to the future, let us look to future Councils. I do not feel that this should not have been pulled. I think that it should have been discussed and I think that it should have been set for the next Council so that they

walk in with solid and clear lines of discussion. I am going to reiterate what I said for a reason—Council Chair Rapozo, it does run faster when you are here. Councilmember Yukimura, I do feel sometimes that some Councilmembers are being frustrated with their inability to ask the kind of questions that they want to ask; however, I still feel too, though, that it needs to flow. I feel that this should not have been pulled, election or no election. This was a discussion, it was on the table, and she did a lengthy presentation—why not let it go through the process? So what if it is going to be a couple of weeks. I just still felt that it would have given new Councilmembers some good guidelines to go on. That is all. I am wondering what the Council's opinion is, so I am asking you all a question right now—what is your opinion if you should get back in after the election on taking up this matter and if the new chair, whoever it is, is going to be able to pick it up again. I think that it is a much needed discussion for any new Councilmembers and the current Councilmembers, if you all get back in. *Mahalo*.

Council Chair Rapozo:

Thank you. Mr. Taylor.

Mr. Taylor:

Chair and Members of the Council, Ken Taylor. As I said earlier, it is government by the people, for the people. One of the problems, and we have seen it more recently in the fiasco with Rice Street, is back in 2010, when the core plan was adopted, there were many questions raised at that time that were never answered. Fast-forward to now, we have moneys being spent for something that is probably going to be a total failure. I hope I am wrong, but I have seen this kind of thing happen in other municipalities over the last thirty (30) years. This is why it is so important that all of the information pertaining to an issue be available to the community. That, in and of itself, would help a lot of times because when you do not have all of the information, it raises questions that end up going unanswered, but it takes a lot of time. If you have all of the information, we might not even have to get up here and ask a question or bother, other than say, "We agree with you, move forward." It has to happen. It is a public service, open government. It is unfortunate, but it happens day in and day out where we come to the meeting and there is nothing available, and then the Administration comes in and passes out a bunch of papers. You have not even had time to read them and you are expected to make a decision on them. We have not had a chance. We have to beg to even get a copy of what is being passed out every day. That is not right. You should be demanding immediately when something is passed out in the meeting that the public gets a copy. We should not have to beg for it. It is wrong. When we have questions, they are legitimate questions and they should be answered. If you cannot answer them today, do not vote on the issue until the answers are forthcoming. That is good government. Thank you.

Council Chair Rapozo:

Mr. Hart.

Mr. Hart:

For the record, Bruce Hart. To pick up where I left off, we elect all of you, so you are our representatives. Therefore, we expect you to do the work of a county councilmember. There is some frustration whenever the public, and speaking for myself, gets up here and there is not enough time, but I am going to be honest—if I really have the time that I wanted, we would be here a long time. What I can really honestly say is that I have to go out and run for one of those chairs. That is what I have to do if I really want to talk, talk, and talk. There is another thing, I can come to any Councilmember, at least this Council is the first I have experienced where everybody has always been open, and I

can get a meeting. I have never had any trouble getting a meeting. I have had several meetings with Council Chair and he is always there on time. I found every one of you, over the two and a half (2.5) years I have been here, to be well-informed about each issue and you have your opinion, and you ought to be able to have your opinion. That is why we put you in the chair. I have a lot of opinions on all of these different proposals, but we elected you guys. At some point, we have to kind of let go and say, "We are going to hold you accountable, but you have your opinions and we have got ours." If Councilmember Yukimura had given her presentation and I could have heard all of the different points of view, that is what I would have liked to have happen, but maybe it will be able to happen afterwards on that issue. That issue is up to this Council. There are just some things that I have learned as I have sat here and sat in the audience that some things are up to the Council. That is why you are there and that is why you vote and that is how you folks set up the rules. The next Council may change it and we can voice our opinion as to that. Thank you.

Council Chair Rapozo: Anyone else? If not, I will call the meeting back to order. I just want to make one clarification for Anne that this Resolution would not carry over to the next Council and that the next Council would have to pass their own. So it is not that these rules would automatically carry over. I just wanted to make that point clear. Ken, you alleged that there are agenda items being posted without information—if that has occurred, I want to hear about it because I sign-off on every agenda item that comes to this Council and every agenda item that has come through this Council has come with a partnering communication from the Administration. Nothing goes on this agenda without that. I do not want the public to think that we are just posting whatever without having the supporting documentation because that is not true and I will make that clear. The other thing is that we have a very strict two-week policy. That has never been followed before, but we require two (2) weeks in advance, unless it is an emergency or time-sensitive. The agenda requests have to be complete with information. So if you have specifics, Ken, bring it up and I will address it. I do not want the public to think that we are just throwing garbage on this thing and waiting for information. That does not happen. I think that is an insult to our staff. Councilmember Yukimura, did you want to go first? I will give you that opportunity to go first. It is entirely up to you.

There being no further public testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: I would like to hear some discussion first.

Council Chair Rapozo: Okay. Councilmember Kagawa.

Councilmember Kagawa: I just wanted to clarify something since Anne mentioned my name. My education of this issue and why it came up came from reading *The Garden Island* a little bit and just to get clarity, kind of said that we need to change the rules in order to make better decisions. A lot of these rules that are being requested were during the Furfaro Administration. It was in place where you could ask the testifier questions. What I am saying is if you want to change the rules, you want to improve the decision-making, then what decisions were made during this term that were as bad as the decisions, like passing Bill No. 2491? I am not saying that bringing up Bill No. 2491 was a bad idea. Every Councilmember is

entitled to bring up whatever issue they want to have the discussions. What I am saying is that the decision, to me, was one of the worst in the history of Hawai'i politics because they had an opinion by Mauna Kea, sixty-six (66) pages long, telling us that it would be ruled invalid and it was. All I am saying is how are the decisions going to improve when we had decisions like those being made when we had the ability to ask questions? I think it is a matter of leadership and I think the leadership has improved. I think the reason why I at least wanted to take away the ability to ask questions was that we had particular Councilmembers extending their own discussion by utilizing the ability to ask questions and getting more time to explain their position on an item. I think it got out of hand. I questioned former Chair Furfaro at the time. How are you going to stop this nonsense? This is not asking questions; this is extending their time to speak on an item. This is not a television show. This is really making important decisions for the people of Kaua'i. This is not Judge Judy or whatever to badger witnesses and stuff. These are important decisions, ask pertinent questions, and move on. I think it was just getting out of hand. That is why I voted for the rule change and I think it is nice to have testifiers to say what they think without being questioned as to why they are making statements. I think testifiers should come here and feel free to speak on whatever they want. I think they have enough knowledge to speak and cover the issue entirely. They do not need the Councilmembers' help to state their case. They are doing fine on their own and I believe they are. Thank you.

Council Chair Rapozo:

Councilmember Chock.

Councilmember Chock: Thank you, Chair. I agree that the timing on this item is difficult just because we are going to have a new Council very soon, so I appreciate Councilmember Yukimura recognizing that. I also want to thank Councilmember Yukimura for the opportunity to have this discussion because I think what it does is it forces us to bring out some of the concerns prior to the new Council for the new Council to decide and not decide fully on the day of Inauguration. I think that we can start now and bring some of the concerns or needs forward that we can always improve on. I think that is what this comes down to, is the fact of how it is that we conflict, because discourse is by nature a part of this job. It is how we do it that makes a difference for me and I think that what I am looking for is an approach to this Council from a point of inquiry. I have stated it before. I think Anne said a lot of great things this morning and one of the words she used is "discovery." We need to have the opportunity to discover things that we do not know or things that could be. There is one part of this that I think we can also reflect on in the past term is that we do not impose our own perspectives. I think as much as we want to create an environment where we can ask questions, there is a line where often times members and the public draws on their own perspectives and I think that is where we start to lose objectivity, and when objectivity gets put to the side, then we do not have the kind of decision process is that we are looking for. So what I am asking for everyone involved in the process to be more self-correcting, more reflective on...which is what I do...I ask the question, "Am I really asking a question now to ask it or am I asking to get a point made?" I personally would like to see us have the ability to ask questions, especially clarifying questions in the moment. I think that it would help us to make better decisions. I would also like to be able to seek a way for us to be able to indicate when things are more fact than opinion, because I think that both are important, but that is when either members are not happy with what is being discussed or how it is being discussed. The other thing that I think is underlying here is, and I heard

a testifier say, "We want a Council who works together," and I agree. I think that while we do not have to agree on everything, we need to be able to work together. That stems from having enough trust around the table that whatever it is I am saying, I can respect what is being said, enough for it not to be taken personally. I do believe that underlying trust issues are issues that need to be worked out, moving into the new Council in order for us to come back to the table and actually present ways that we can improve. The great thing about humans is that we have that ability. We can always improve if we choose to. Leaders choose to be willing to improve and I think that we should be asking the questions in the next term of how we can do this better. My hope is that we come with ideas to make the process and relationships better for us moving forward. I do appreciate how things have moved more quickly and I think that we need to sort of find balance in running a ship tight when necessary, but also being really flexible when necessary to get the kind of information that we all need. Thank you for bringing it up and I look forward to working on it into the new term. Thank you.

Council Chair Rapozo:

Councilmember Kaneshiro.

Councilmember Kaneshiro: For me, I was not going to vote for this. In regards to Councilmembers having more time to speak and no limitation on the amount of times we can speak, I think we know the rules. The rules are five (5) minutes for a two-time maximum, and we have a lot of time to prepare. We have a lot of time to ask the Administration and people our questions, to find answers, and be prepared, do our homework, and come to the meeting, and be prepared to follow the rules. State your point within five (5) minutes. It has worked fine. I think five (5) minutes is enough time for us to make a point to summarize why we are voting a certain way. I have not had a problem with that. In regards to asking the testifiers questions, we can ask the Administration all of the questions we want. We have time to prepare all week for any questions that we have before the item comes up on that day. As far as public testimony, we can ask questions of them. We can even ask them questions outside. When people E-mail, we can E-mail them back and ask for clarifying questions. We do not need to ask the question on television and we do not need to get the answers on television. We can get the answers outside of these doors when we are on a break and the testifier goes outside. We can say, "Hey, can you provide me with this information?" We have even asked testifiers to provide their written testimony, just so that we can look and see where they get their references. We have done that before, so I do not necessarily think that we need to be asking them the question here on camera. We are the decision-makers, we get the information and prepare, and we get the information we are comfortable with to make the decision that we need to make. Finally, as far as the Chair goes, the Chair has run very fair meetings. He has run it very efficiently. Being a chair is not easy. I am the Chair of the Budget & Finance Committee and it is not easy to keep the meeting in line. It is even more difficult to keep our general council meetings in line. I think it has been running great. I commend the Chair for running the meetings well. There have been exceptions when maybe people had to testify ahead of time because they were not able to stay and the Chair has made exceptions. I think it has been running very fairly. I am happy with the way things are running. When it comes to us speaking, we have a lot of time to prepare. We can ask the Administration questions all week. We have a first reading, a public hearing, a committee meeting, and a second reading—all that time to find our answers that we need to make the right decision when it comes time. I think it has been running well and I commend the Chair for

the hard work, because it is hard work. I do not know how many people want to be the Chair, but it is difficult and I commend him for it.

Council Chair Rapozo: Thank you. Anyone else? Councilmember Kualii.

Councilmember Kualii: I, too, want to thank the Chair for his leadership. I do think to a certain degree that it does not even make sense that we are considering this today and that the Chair's discretion to not put something on the agenda, which as a principle he has not used at all, and this is showing up on this agenda. The obvious conclusion is timing. We are getting there now. Councilmember Yukimura is saying herself that she is going to recommend receiving, deferring, or putting this aside. The new Council will make that decision. The Council will decide on who their Chair is, what the rules will be, and how they will operate throughout the year. The rules have mostly been the rules for a long, long time. Some of the proposed changes in here are changes to the rules that have been in place probably for forever. Changing five (5) minutes to six (6) minutes—that would be entirely new. Five (5) minutes, like some of the other Councilmembers are saying, is plenty enough time on each agenda item to make your point, as long as you have done your homework, informed yourself, and if you have the ability to express yourself clearly and concisely. Now, the responsibility to be clear and concise is on all of us in serving the public; us as Councilmembers, but also you as someone coming forward and making testimony. Hopefully, you have done your homework in advance and hopefully you will always have it in writing, because you never know when you are going to run out of time. Watch how the national congress operates or how the state legislature operates. Your time is your time and when you run out of time, have a backup in writing so at least you can submit that. Our responsibility is to gather all of that information from you and we do the best that we can in listening, not only here during the meeting, but when we are out in the public and also in reading all of the things that you send us like hard documents and E-mails. You are being heard. The question about how we are answering you or how we are dealing with the things you bring to us, it is by our service, day in and day out. We cannot solve all of the problems you would like us to solve, but we do best that we can and that is in our service, day in and day out. Yes, some of these proposals are entirely new, so the new Council should consider them, if that is to be the case. I am perfectly fine with the rules as they have existed. Some of these changes, when you say you give that eighteen (18) minutes at the front-end of the meeting, when you have a time limit, it is still going to eliminate that seventh or eighth person who wants the same consideration, right? Then to say that some of these things are not allowed—it is not that they are not allowed because it is allowed by the discretion of the Chair, and the Chair...if you cannot...like Glenn Mickens has to leave later today, so if you cannot be here for when your item comes up, the Chair has given the discretion of allowing the speaker to testify. Ultimately, whatever the Chair's decision is, if we do not like it, we can appeal the decision of the Chair. We, as a body, can overrule the Chair. The Chair does not have ultimate power that whatever he says goes. We, as an elected body, have that ultimate power in representing you as the people. So we have "point of orders" by Robert's Rules of Order, so the Council Rules and Robert's Rules apply. Then we can also appeal the decision of the Chair. The rules are fine. I do not know why we are trying to change it and clearly now is not the time as well. Thank you.

Council Chair Rapozo:

Councilmember Hooser.

Councilmember Hooser: Thank you, Chair. I want to thank Councilmember Yukimura for raising the issue. I think it is always a good time to raise issues that are relevant to the way we operate. I voted, as well as a few others, against the rule change when it was first made that prohibits us from asking follow-up questions to people who testify. Frankly, I feel like a bump on the log sometimes, often times, when a long line of people come to testify and we can just sit here and listen and we are not able to ask clarifying questions as to the situation of that individual or how they may have come to their conclusion, let alone, try to clarify things when there might be misinformation presented. I know we are not here to debate Bill No. 2491, but there seems to be a lot of angst in at least one (1) Councilmember about that issue, and I want to say for the record that I thought former Council Chair Jay Furfaro did a fine job when he was the chair in running this meeting and allowing members to talk and shepherding through the process on many issues, Bill No. 2491, not the least of which. Again, I commend him for his style and his conduct, and I want to say for the record that I thought he did a good job. That measure was passed with five (5) votes, the supermajority overriding a veto, and the jury is still out as to the legal validity of that at the end. We are awaiting appeal. That Bill accomplished to a large extent what it was intended to accomplish. Today, we have more disclosure of pesticide use than we ever had before and we would not have it without that Bill being presented and passed. We have the Kaua'i Agricultural Good Neighbor Program, as faulty as it is, because that Bill was passed. Those companies no longer grow and spray chemicals next to schools, roads, hospitals, and houses as a result of that measure being passed. The state legislature has appropriated five hundred thousand dollars (\$500,000) to help fund the Department of Agriculture in other studies that will increase the public's safety, health, and information on this industry and in this situation, as a result of the good work that was done on that measure. So the introduction and passage of Bill No. 2491 has had great positive impacts and will continue to do so. It is unfortunate that some continue to harp on it over and over again, as somehow a negative indication of this Council's activity. Again, I want to commend former Council Chair Jay Furfaro and the good work that he did and commend Councilmember Yukimura for being willing to raise these important issues and being willing to have the conversation. I thank the Chair for putting it on the agenda as well. Thank you.

Council Chair Rapozo:

Councilmember Yukimura.

Councilmember Yukimura: In introducing this Resolution, it was not my intention that this be an evaluation of previous Council or the present Council, or previous Chair or the present Chair. For me, the issue is the rules and what best facilitates discussion and problem-solving on this Council. Mr. Hart said it was about the fact that we need to work together. Well, the rules define how we work together. That is their importance—how we work together when there is conflict and differences of opinion and how we work together when we are trying to solve a problem. Information does not only come to us from the Administration; it comes to us from the public. I do not believe that we come with ready-made conclusions that we are not going to change when we hear new information. So it is not a thing about being prepared to give your opinion at the beginning of the meeting. It is coming here to hear input from the Administration, from the public, and to try to solve the problem together. That takes flexibility and time. It also takes, as

Councilmember Chock said, real inquiry about what the nature of the problem is and what the possible solutions are. Those who have said that things are working fine—well, they have been seeing it from the majority standpoint, but there have been minority opinions. In fact, the Chair was in the minority on this issue of funding security for events that was an appropriation we made and he said that it is important to have the minority position. I want to show, if we may, the resolution that has adopted the rules that we are operating under, “Resolution Adopting the Rules of the Council for the Organization of Committees and Transaction of Business” 2015, which it was passed on December 1, 2014. Well, I want us to look at Section 2. In interpreting the rules, the intent of the Council shall be deemed to have been: a) carryout the majority view of the Council. Now, we have to figure out what the majority is. Theoretically, we have not decided our votes before the meeting, so that is part of it, and yet provide the minority fair opportunity to express its views and to provide a written guide for an efficient and defined parliamentary procedure for Council deliberation so that its actions may be based on an informed and reasoned discussion of the issues. Those are the guidelines of the goals of our rules. If we are to allow the minority view, speaking two (2) times limits the minority when it is not related to relevance, but it is just an arbitrary cut-off because the majority has a lot more people to put forth the opinions and the minority position might be one (1) person and you are restricting that person to only two (2) times. This rule about speaking in the beginning of having people allowed to speak at the beginning of the meetings, that is an unstated rule, but you will see that in our rules, putting it in writing is important, because then everyone knows what the rules are. People reading the rules do not know that they can come and testify in the beginning if they say they need to and if they ask the Chair. But if it is in writing, they know in consulting the rules. Furthermore, if somebody has a point of order, they are supposed to cite a rule and if it is not in writing, there is no rule to cite. Some of these things are just improving the rules. It is not about who is better or who is worse or anything like that. It is how we can have the best rules to facilitate the best problem-solving and discussion. I really appreciate this discussion today, both around the table and from the public because this is such an important issue. In congress, the “Powerful Rules Committee” is acknowledged as such because the rules determine so much in terms of how we take in information, how we interact among ourselves and share our thoughts, and that affects how we get to decisions. That is why it was never my intention—I understood that we cannot pass rules that will apply to the new Council, but it was a really strong feeling that we should have a discussion about it. I am thankful for this discussion. I do not know how else you will have a discussion before Inauguration, but hopefully this discussion will feed into the thinking and our decision-making and the next Council’s decision-making.

Council Chair Rapozo: Thank you. Anyone else? If not, first of all, thank you for all of the compliments. That was nice. From day one, all I have tried to do is bring fairness to this body. Councilmember Yukimura talked about Section 2 in the Resolution about equal time for majority/minority—everybody has the same time limits on this body. Most of the people on this table do not need to be stopped because they see the light, but in many cases I have to remind people. Whether they are the majority or minority, it does not matter because everybody gets the same treatment. Really, I have the discretion to say, “I am going to suspend the rules for Councilmember Kagawa because he supports my position. So Councilmember Kagawa, you can go ahead and speak.” That would be completely wrong. But everybody gets the red light and everybody knows the rule.

Councilmember Chock talked about what is most important, which is a Council who works together, which I think is critical, too. That is why we have rules. That is what I have found in my time on this Council through various chairs was that some members had extra time and some did not. I tried to exercise points of order and it got acknowledged, but the latitude was granted to other Councilmembers that had the majority view. I felt that was unfair, but that was it. You call for the rule, the point of order, you get the ruling of the Chair, and you move on. I think the rules are important because it sets up and the order and the decorum so that when we have disagreements, it is handled in a professional way. Now, what has occurred is when there has been a problem with the rule...that has been the cause of the conflict; not the matter itself, not the issue itself. I think we are all adults enough to know that we are going to have some disagreements as far as issues, but the rules should be respected and adhered to. There are processes, as Councilmember Kualii talked about, like the point of order and the challenging the ruling of the Chair, which have both been exercised while I have been the Chair. Once that happens, we are moving on and I think that is what the rules are important for. Addressing Mr. Taylor's position, I think Mr. Hart kind of addressed that. We are elected by the people. To think that the public should be part of the deliberation on this table, I think, is not rational. There would be chaos. We have provided every document. I know Mr. Taylor referenced it as being "begging" for documents, but maybe some of you should sit in other municipalities and in other counties' council meetings and see how much attention you get. You have one (1) minute on O'ahu to speak. Kaua'i County is the most flexible, lenient county for the public. That is not my rule; that has just been the way it is and I thank our predecessors for allowing that to happen. As far as the comment about "since this rule has passed, what is the data"—I do not know if we collected any data, but I can assure you that no one has gotten badgered since that rule passed. That rule came up because we had received complaints from the public, not from "Mel Rapozo." It was from the public that testified or wrote in E-mails that said, "I felt like I was being cross-examined. I was badgered. I will never come back again." I tried to address that here. I tried to address it on the table in a professional manner. If anybody can challenge me on that, then go ahead. I tried to remind Councilmembers, "Hey, ask your question." I could not get it done. My leadership was not good enough; hence, the rule change. That was the last resort. I want to remind people of Rule No. 11(c)(10) and even the newspaper did not put this in and it frustrates me, because people read the paper and think, "What a dictator." Rule No. 11(c)(10) currently, right now says, "The Chair may allow Councilmembers to ask speakers to repeat or rephrase statements made during their testimony, but Councilmembers shall not ask questions that give the speaker a greater opportunity to testify than others." That is in the rule now. So everyone says, "We do not have a chance to ask for clarifying questions." You have an opportunity, and it has been done regularly, "Can you please restate or rephrase this," and they have responded. That is in place today, *The Garden Island*. So please put that in there. I get irritated when people say, "Why do you not then ask any clarifying questions?" They have the ability. It has been used. Please get the facts straight before you start throwing the daggers. My time is running out. I do want to thank Councilmember Yukimura for introducing the matter and I also want to thank her for seeking a receipt because of the timing. Councilmember Yukimura, do you want to say anything else? I know you have more time.

Councilmember Yukimura: Thank you. Yes, I do. Being able to ask speakers to repeat or rephrase what they said in their testimony is not the same as

asking clarifying questions, because repeating or rephrasing is just saying the same information over. When you ask clarifying questions, you want to ask where they got their information from or when certain things happened. You are asking for more information and some relevant details and that is not allowed in the rules. I have a committee report on the discussions that we had when the fifteen dollar (\$15) minimum wage resolution was introduced, and at that time we could ask questions, and there was a wonderful dialogue with small business people who came here to tell us about how they would be impacted. Out of that discussion and question and answer, we were able to craft some amendments that addressed their concerns. That is the importance of being able to ask clarifying questions. When you limit debate arbitrarily, like to two (2) times, no matter if you have more relevant information; that is such an important part of the democratic process that Robert's Rules requires a supermajority to limit debate. In another county in Hawai'i, too, if you pass rules that limit debate, it requires a two-thirds vote on the county council. That is how important debate and robust discussion is. Unfortunately on this Council, it takes a simple majority. But that shows how a simple majority can control and how a minority opinion can be limited. Full discussion and full hearing of minority—you saw that in the adopting resolution. It is important that the minority position be heard and I believe that some of the rules that we are operating under do restrict that opinion.

Council Chair Rapozo: Anyone else? Councilmember Kaneshiro.

Councilmember Kaneshiro: Again, I just want to clarify that we do not need to be on television to get an answer. It is our responsibility to be prepared and it is also the public testifier's responsibility to come with a clear, concise testimony. In regards to quieting the minority view, this proposal that we have does not do anymore to give the minority any more time. Everyone still has equal time. All this does is give everyone six (6) minutes, rather than five (5) minutes. If there is a majority that speaks all of their five (5) minutes, they will have more time, but that is fair. If we were to say anytime there is a majority, then the minority gets more time to speak to equal the majority, I think it would be pretty much chaos. I think it is fair and I am glad that we can probably table this and just move on.

Council Chair Rapozo: Go ahead, Councilmember Yukimura.

Councilmember Yukimura: So the limitation on the minority is the two-time limit. See, I am speaking three (3) times right now, thanks to the discretion of the Chair. But it is pointing out that the limit on the minority is not the five-minute rule or it is not only the five-minute rule, but also the two-time rule. I believe that is a relevant comment to the discussion and I thank the Chair.

Council Chair Rapozo: Because you asked nicely. Councilmember Yukimura and I did have a discussion this morning and I appreciated that discussion. Councilmember Kualii. Let us try not to spark anymore strong debate.

Councilmember Kualii: I kind of want it make the point that though it is subtle, there is a difference between limiting debate and limiting discussion. Limiting debate is limiting debate of the body and limiting discussion is keeping us each, as individuals, to our five (5) minutes. As far as limiting debate by the body, it does take five (5) votes. When you call for the question, which we have never really done, even though at times some of us have been frustrated and felt like we

have “beaten this horse to death, can we just vote?” Unless five (5) people can support the call for the question, we do not get to the vote, so we keep hammering it, repeating, and going around and around. There is a difference between limiting debate and limiting discussion. The other thing is that the testifier decides to come forward and share what they believe is important. We, as Councilmembers, do not get to make their testimony by telling them, “No, tell me about this or tell me about that,” in limited time, because then that unfairly extends their time. Thank you.

Council Chair Rapozo: With that, we currently have a motion to approve. I would need a motion to withdraw that motion.

Councilmember Yukimura: I think I will just do...

Council Chair Rapozo: The receipt does not trump, so we need to withdraw the motion.

Councilmember Yukimura: You are correct. I will withdraw that motion.

Councilmember Yukimura withdrew the motion to approve Resolution No. 2016-78, Councilmember Chock withdrew the second.

Council Chair Rapozo: Thank you. With that, I need a new motion.

Councilmember Kagawa moved to receive Resolution No. 2016-78 for the record, seconded by Councilmember Kualii, and carried by the following vote:

FOR RECEIPT:	Chock, Hooser, Kagawa, Kaneshiro, Kualii, Yukimura, Rapozo	TOTAL – 7,
AGAINST RECEIPT:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Chair Rapozo: With that, we have two (2) open session items that require us to go into Executive Session first, which are C 2016-236 and C 2016-237. We have nine (9) Executive Sessions. First, read us into the two (2) that are required, go in and have our briefing, come out for the vote, and then we will go back in to finish up. By doing that, we will be able to cut B.C. loose. Can you read ES-876 and ES-877, unless you want to do it all right now?

Councilmember Kagawa: Chair, Ken had his hand up, so I do not know if the public has any items that they want to speak on. Maybe we should have them do their testimony as well.

Council Chair Rapozo: Yes, we will have Jade read all of them in.

Councilmember Hooser: I also have a brief question on C 2016-236.

Council Chair Rapozo: Of the County Attorney?

Councilmember Hooser: Yes.

Council Chair Rapozo: Okay. Jade, can you please read all Executive Sessions first?

Ms. Fountain-Tanigawa: Yes.

EXECUTIVE SESSION:

ES-874 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing, discussion and consultation regarding the quarterly report on pending and denied claims. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-875 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on a recommendation for authority to expend funds up to \$25,000.00 to retain Special Counsel to act as Disclosure Counsel for the County of Kaua'i, and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-876 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing on a recommendation for authority to expend funds up to \$25,000.00 to retain Special Counsel to act as Bond Counsel for the County of Kaua'i, and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-877 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council, to provide the Council with a briefing in the case of Kaua'i Ferals dba Kaua'i Community Cat Project vs. Kaua'i County Council, et al., Civil No. 16-1-0142 (Fifth Circuit Court), and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-878 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session with the Council to provide the Council with a briefing regarding the claim against the County of Kaua'i by Tyra-Lynn Constantino for damage to her vehicle, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-879 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Council, requests an Executive Session with the Council to provide the Council with a briefing regarding the claim against the County of Kaua'i by Shellie Redd for damage to her vehicle, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-880 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4, 92-5(a)(2), and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney, on behalf of the Kaua'i County Council, requests an Executive Session to brief the Council on matters regarding the Notice of Violation and Order (NOVO) from the State of Hawai'i Department of Health, Clean Water Branch for National Pollutant Discharge Elimination System (NPDES) Permit related violations and penalties at four (4) refuse transfer stations, and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-881 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council to provide the Council with a briefing in the matter regarding a pre-litigation settlement offer in the case of Dylan Kekoa James v. County of Kaua'i et. al., to obtain settlement authority, and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-882 Pursuant to Hawai'i Revised Statutes (HRS) Sections 92-4 and 92-5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an Executive Session with the Council, to provide the Council with a briefing and request authority for a possible settlement proposal in a claim filed by Bacon Universal Company Inc., and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

Councilmember Kagawa moved to convene into Executive Session for ES-874, ES-875, ES-876, ES-877, ES-878, ES-879, ES-880, ES-881, and ES-882, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Councilmember Hooser wants to ask a question of the County Attorney, but before we do that, let us suspend the rules and have Mr. Taylor give his testimony.

There being no objections, the rules were suspended to take public testimony.

Councilmember Kagawa: Chair, I have a process question.

Council Chair Rapozo: Go ahead.

Councilmember Kagawa: Are they speaking on the entire list of the Executive Sessions?

Council Chair Rapozo: I have no idea which item he wants to speak on. I will find out right now.

Councilmember Kagawa: Because I would think that we would need to kind of control it.

Council Chair Rapozo: I am assuming that he is going to be speaking on a specific Executive Session item.

Mr. Taylor: Yes, I have objections to three (3) of these closed item issues. The first one, ES-875, "to provide the Council with a briefing on a recommendation for authority to expend funds up to \$25,000.00 to retain Special Counsel to act as Disclosure Counsel for the County of Kaua'i..." I see absolutely no reason in the world for that to be dealt with in closed session.

Council Chair Rapozo: Okay, what is the next one?

Mr. Taylor: ES-876, "requests an Executive Session with the Council to provide the Council with a briefing on a recommendation for authority to expend funds up to \$25,000.00 to retain Special Counsel to act as Bond Counsel for the County of Kaua'i." Again, I do not believe that there is any reason for that to be done in closed session. Lastly, ES-880, to discuss "the Notice of Violation and Order (NOVO) from the State of Hawai'i Department of Health, Clean Water Branch for National Pollutant Discharge Elimination System (NPDES) Permit." Again, I think it is very important that the community knows and understands what is going on. I do not believe that there is any reason in the world to discuss this item in closed session. It should be done in public so that the community knows and understands what is going on and if there are departments that are not doing the job that they are supposed to be doing and taking care of things. Those three (3) items of this list should be eliminated from your closed session activity today. Thank you.

Council Chair Rapozo: Thank you. Councilmember Yukimura.

Councilmember Yukimura: I have a question for the County Attorney.

Council Chair Rapozo: Okay. Councilmember Chock.

Councilmember Chock: Chair, I was just going to make a request that perhaps Mauna Kea can give us a briefing as to what can be discussed within those three (3) of concern.

Council Chair Rapozo: Okay. I can address ES-880 because that is basically a Council request. It involves personnel matters, simple as that. It involves people that we discuss. That is why ES-880 in for a closed session. For ES-875 and ES-876, and I am assuming Councilmember Hooser has the same question, as it relates to the two (2) items that we need to vote on. With that, the rules are still suspended. Mauna Kea, please come up.

MAUNA KEA TRASK, County Attorney: *Aloha.* For the record, Mauna Kea Trask, County Attorney.

Councilmember Hooser: Good morning. The two (2) items, ES-875 and ES-876—first of all, what is Special Counsel acting as Disclosure Counsel and why does it have to be in Executive Session, I guess?

Mr. Trask: Well, the Executive Session is a matter of practice and advice. When we seek authorization from this body for Special Counsel, we do an Executive Session and we have to get your approval in order to acquire it, and then I will render you or this body specific advice pertaining to this request. That is legal advice and that is appropriate Executive Session. I am happy to give you some legal information, as far as what Bond Counsel and Disclosure Counsel are. I am happy to do that; that is not advice. I am not going to say my advice regarding that, but just what it is if you would like.

Councilmember Hooser: What is Disclosure Counsel?

Mr. Trask: "Disclosure Counsel" is "an attorney or law firm retained by the issuer," in this case, the County in the bond issuance, "to provide advice on issuer disclosure obligations and to prepare the official state and/or continuing disclosure agreement." Recently, I attended the International Municipal Lawyers Association training in San Diego. It is a nationwide training that county attorneys from all across the country go. It was the first time that our office had gone to it, to my knowledge, and it was an extremely good training. We will likely be seeking funds next year to send more deputies next year. What I learned about...I knew nothing about Bond Counsel coming in as a County Attorney. We had previous Bond Counsels and previous bond issuances, but I did not know what they were really. So in going to that training, I learned about them. So specifically regarding Disclosure Counsel, as a general proposition, this was gotten from...you can look it up yourself...this is based on a presentation of the League of California Cities Municipal Bonds disclosure and requirements and the role the City Attorney...this is May 8, 2014 by Stephen L. Taber of the law firm of Meyers Nave, which is a big securities law firm that does municipal bond issuances and other municipal security transactions, "Essentially, as a general proposition, federal security laws do not require municipal securities to be registered. These laws instead impose a duty on municipal issuers to refrain from making false or misleading statements in the connection with the offering of its securities. This obligation is typically fulfilled through a very formal process of the issuance of and 'official statement' or 'other offering document,' which constitutes the issuer's statement of facts surrounding the issuance. Up until recently, the Security Exchange Commission (SEC) or the Federal government, has not vigorously enforced these standards. However, recent development, such as the enhanced enforcement powers in the Dodd-Franks Wall Street Reform and Consumer Protection Act also known as Dodd-Frank, as well as the SEC's heightened concern about disclosure related to municipal securities, have resulted in increased activities in this area of which municipal issuers should be aware." This is subject to The Great Recession, as well as large municipal bankruptcies within the past ten (10) years, including, but not limited to Detroit and other cities and counties. "The SEC has recently developed a body of cases, litigation releases, orders, and investigative reports that reflect areas in which is the SEC has found disclosure to be deficient." When you are talking about disclosure, normally in a state or federal

fraud case, it is a specific intent crime, which means you have to intentionally act to defraud. However, in the SEC, the standard for fraud is negligence. So if you should have known to make a material disclosure and you fail to, you can be hit for fraud as well.

Council Chair Rapozo: Mauna Kea, I am going to interrupt you right there because I think the question that Councilmember Hooser had and which I had, and which Ken has, is...I am assuming that this briefing would have been given to us in Executive Session. I guess for me, what exemption under Chapter 92 gives us the right to go into Executive Session? I think I know where you are going with this. It is very clear that the Administration is contemplating a bond issuance, right?

Mr. Trask: Yes.

Council Chair Rapozo: Prior to hiring Bond Counsel and Disclosure Counsel, at some point the Council is going to have to be informed of the Administration's decision to seek or go for a bond issuance. Is that correct?

Mr. Trask: Yes.

Council Chair Rapozo: Does the Administration need the Council's approval before they move forward on seeking a bond?

Mr. Trask: I believe so.

Council Chair Rapozo: Again, I am just tossing this out because I am confused. I have heard the scuttlebutt from the Administrators that have been here like, "Oh, when we go after the next bond," but we have never had a briefing from the Administration as to their plans. Maybe the Budget & Finance Committee Chair has and maybe the Public Works / Parks & Recreation Committee Chair has—they are all nodding "no," but at some point, the Administration should come to this body and give us their plan as far as going out to seek a bond. I know Wally just walked in, so he is listening. To me, it is kind of premature. I am glad that Councilmember Hooser brought this question up because I assumed something was wrong and that is why we are going into Executive Session. I appreciate the request from the public, but I would assume that this Council should be briefed on the Administration's plans to move forward on bond issuance prior to coming in for money to get Bond Counsel and Disclosure Counsel. I may be totally off-base, but I think that the Council should at least have that discussion with the Administration publically so that we know exactly what direction we are going. This is just so hypothetical, but if the Administration came up and said, "We are going to seek a thirty million dollar (\$30,000,000) bond to start a rail project," I do not think the Council would approve that and this Bond Counsel and Disclosure Counsel would be moot. It is just premature to seek these attorneys before we actually get a discussion with the Administration. I apologize for interrupting, Councilmember Hooser.

Councilmember Hooser: That is fine. Thank you for clarifying and expanding that.

Council Chair Rapozo: I was hoping to get the briefing, but from what I have heard so far, this all belongs out here anyway. Councilmember Kagawa.

Councilmember Kagawa: I agree. If the bond is to repair some much needed roads or bridges then I will celebrate today, but if it is to do more planters, bike paths, and whatever, I want to know right now.

Council Chair Rapozo: Well, we are not going to know right now because that is not on the agenda. I am just curious why we would go back there. I know we had a discussion, Mauna Kea, and I think that fits in maybe ES-876 and I think it is important that we have that discussion in the back...that is the only one...as far as the Disclosure Counsel...I do not know. I am curious to hear from the rest. Why do you not respond to that and we will have the discussion with the Council.

Mr. Trask: Sure. I think that was likely what had happened in the past, but I think that...

Council Chair Rapozo: A lot of things happened in the past, Mauna Kea, and that is why we are in the hole that we are in.

Mr. Trask: That is why I think it is appropriate to go before. The reason why is because after all of these security exchange enforcement actions occurred against municipalities, not only were municipal bodies fined and prosecuted under these laws, but so were officers in their official and individual capacity. A lot of this stuff, because it is a negligence standard, some people were even prosecuted because of statements made on the floor or in Facebook and social media during speeches. The role of Bond Counsel has been very fluid and it is evolved over time. Currently, Bond Counsel can be contracted to "perform supervising the bond proceedings, including preparation of documents necessary or appropriate for the authorization, issuance, sale and delivery of the bonds, coordination of the enactment and execution of the documents, assisting in evaluating the structure of the bond issue based on economic and business decisions of their client, which have been made in reliance on the advice of other participants in this financial transaction, and assist the issuer or others in various aspects of preparing or reviewing the official statement," et cetera. So Bond Counsel would be contracted to advise the Administration, in this case, about what is appropriate to bring to you so that we can be sure that all of the discussions, which need to be factual, if material on this floor do not create or put you at-risk of violating SEC laws. Those are very complex and I think that you would be best served currently, and it is the current best management practice to engage Bond Counsel specifically via an engagement letter and define their role and responsibilities. Bond Counsel is not necessarily our counsel. They can be viewed as counsel to the transaction or even the underwriter, and Disclosure Counsel helps protect you, the Administration, and employees engaged in the preparation review of documents for this issuance to make sure that everything is material. Of course, I do not want to put anyone at-risk of violating Federal law, if I can. In looking at previous issuances we have done, one we had since 2009—I believe was a 2009 general obligation issuance—since then, we have only expended about thirty-two thousand dollars (\$32,000) in Special Counsel, so this is very important and crucial advice that you can get in professional service and it is relatively cheap compared to every

other Special Counsel that we see. In the past seven (7) years, we have only spent about thirty-two thousand dollars (\$32,000). So I think twenty-five thousand dollars (\$25,000) is really good, especially if ultimately the decision to issue a bond is made to fix roads and other public services. I want you to be in the best place to have those open discussions without putting you at-risk, et cetera. I just learned all of this, so I, myself do not want to be negligent in my participation in this action.

Council Chair Rapozo: The discussions, and I am not talking about the discussions of how we seek a bond or how we are going to pay for the bond, but the discussion as far as what projects are going to be included in a bond issuance—I guess for me...I am ignorant... I was not part of the prior Councils where they had their team and they all went to San Francisco. I do not know. I am actually thinking out loud here, but before we pay fifty thousand dollars (\$50,000), I think you would need some sort of a buy-in from the Council on whether or not we are even moving forward on a bond issuance. That is like if I am thinking about buying a house with my wife and I need a real estate attorney, I am not going to get a real estate attorney until my wife, who is really the Council of my household, says it is okay, "Let us move forward." I do not need the attorney for my wife and me to discuss whether or not we need a new house. I think that needs to happen before we go out and hire real estate attorney to help us through the transaction. Maybe that is totally crazy, but I am just wondering why would we be hiring lawyers now without even...this is what happens...we have seen this in the last few months where we have had the Administration up here and asking them why they did not tell us. Now we have these arguments because we never had that communication and I have not had the briefing.

Mr. Trask: I think that their services would be critical and crucial in you deciding whether or not to do it because they would look at our financials and see whether or not what was doable or what was not. So when the projects hit the floor, it is not a wish-list. You can really put yourself at-risk if you do not know specifically what you are talking about, and if someone asks our office or me to review the financial documents, it is not going to be timely and I cannot ensure that it will be correct because this is Security Exchange Commission law that is very specialized and nuanced. There are very limited practitioners that do this. It is like a patent attorney. You have to know and practice in that field in order to render you the competent advice. So I think if we have to address these issues quickly then I would advise this is the best way. Again, it is your choice today.

Council Chair Rapozo: Yes, it is my choice, but it would be based off of your opinion. I am hearing you. Councilmember Hooser.

Councilmember Hooser: Real quickly and it is relatively minor, but on the posting it seemed like the Disclosure Counsel would someone refer to bonds. Just so that the public at least knows that we are not disclosing something else. The other is that I understand, I think, the position that you have on this, but I would like to get the Administration up here because it does seem like we are putting the cart way before the horse. We should at least have a general discussion on whether we are considering floating bonds for affordable housing, highways, bridges, or whatever before we got out and commit to spend fifty thousand dollars (\$50,000). It just seems like it is a basic discussion that we should have without the detail, but just that.

Council Chair Rapozo: I will allow the questioning of the Administration here regarding their intention of moving forward on a bond. As far as the specifics, projects, and debating, we would definitely need another posting. Councilmember Kagawa.

Councilmember Kagawa: I guess I had a question, too. Obviously, somebody from either the Department of Finance, the Department of Public Works, or the Department of Parks & Recreation is in charge...I do not know...what are the priority projects? You folks must have a top five (5) for the bonds that we have, so who is in charge? Is it the Managing Director or Ernie Barreira? Who is in charge from the Administration side so that we can ask written questions to the appropriate people? We are asking you, but you obviously are not the one who is picking what projects are most worthy of going for bonds at this time.

Mr. Trask: If I could just answer the Disclosure Counsel real quick; since the recent financial crisis and the heightened security of the SEC over activities and securities market that are manipulative or dishonest, issuers and their officers can best protect themselves by taking the following actions, and these are the best management practices that municipalities all across the nation are using; "engage competent disclosure counsel and follow industry standards for disclosure in connection with the issues, enter into well-crafted, continuing disclosure agreements with respect to new issues," and various personnel best management practices that do not specifically relate to disclosure counsel, but who can direct us on how to best structure our Administration and the bond team proceeding forward. The Disclosure Counsel is a relatively new aspect of it, but it is recognized by the industry in bond issuances as a best management practice, which I know this body appreciates and wants to improve going forward versus repeating or making a past mistake. That is all.

Council Chair Rapozo: Have we ever retained a Disclosure Counsel before?

Mr. Trask: Never.

Council Chair Rapozo: We just had a Bond Counsel, which may not have even been our disclosure?

Mr. Trask: They have been model Special Counsel contracts, so they have not gone over specific duties and what they want to do, so that is why I want to bring this up-to-date.

Council Chair Rapozo: Okay. Councilmember Hooser.

Councilmember Hooser: Just briefly, and I think this is another reason that on the future postings to have a little bit more information, because the posting is for the public also. So with "Bond Counsel," most people reading that realize that it is about bonds and not the Disclosure Counsel.

Council Chair Rapozo: Councilmember Kualii.

Councilmember Kualii: I just have a quick, maybe oversimplified question, does retaining this Disclosure Council now effect or improve our position with bonds that have already been issued? Is it for future bonds?

Mr. Trask: It would be in contemplation of a new bond issuance.

Councilmember Kualii: Okay. Thank you.

Mr. Trask: Because our old ones are specifically contracted for already.

Councilmember Kualii: Thank you.

Council Chair Rapozo: Which we have not been briefed on and it is a frustration. It is huge. The bond issue affects this community going forward, and yes, I think we do need one. This is the cart before the horse, in my opinion, but I trust your opinion. Anyone else with questions for Mauna Kea? I do not know if Wally is prepared to answer any questions about this. If not, Wally, that is fine. I do not like putting people up there unprepared. I think the question is, is the Administration contemplating a bond issue? What is the timeline?

WALLACE G. REZENTES, JR., Managing Director: Wallace Rezentes, Jr., Managing Director. In general terms, the Administration is working on a proposed list of bond projects right now. We have the Department of Public Works and the Department of Finance jointly working on it with engaging the different departments with the goal of coming up with a priority list of projects. That list of projects would ultimately have to come to the Council, as we have in the past with other bond issues, with a list of projects that would be presented and approved by the County Council. Having been involved in the processes two (2) or three (3) times, those projects are part of the approval process and part of the bond issuance process. One of the things that we are trying to get a handle on that is somewhat unique or more relevant to this round of funding is that we are trying to better solidify the projects that can be funded through State Revolving Fund (SRF) funding and what would qualify under SRF funding through the State. We want to maximize those funds before we come up with a priority list because if we can leverage SRF funding, it is at a much better price-point than bonds. So we are not probably going to have all of the answers to that because that requires approval beyond us, but we are trying to solidify, as much as possible, those projects. My guess is that we are going to be finished in a couple of months and be ready to move forward. I think with Mauna Kea's request, he wants to stay ahead of the game and be proactive versus reactive and go through the procurement. For his role, his part of it, perhaps you could allow him to proceed, and then not officially engage, but at least start the procurement and start of the solicitation for the counsels that he seeks so that he is not catching up to our requests and what we move forward on for ultimately getting the Council to approve whatever project list we are going to present.

Council Chair Rapozo: Wally, at what point were you folks planning on informing the Council or meeting with the Council?

Mr. Rezentes: I think in a couple of...

Council Chair Rapozo: When you folks have made up your mind on the projects?

Mr. Rezentes: No. We were working towards getting ultimately a recommended project list.

Council Chair Rapozo: In the past, we have had several bond issues, but in the past, was the Council not involved in that?

Mr. Rezentes: Yes, definitely. We are trying to come up with a recommended list that we are going to be comfortable moving forward with and funding. There is going to be a lot of stuff that is not going to make the list, but ultimately, we are going to come here and engage the Council on that list. I am sure the Council...

Council Chair Rapozo: I guess you missed my point. Should the Council not be involved prior to that list? Do you know what I am saying? It is going to make no sense if you bring your list and then all of a sudden you have a bunch of Councilmembers that want...I guess to me it seems reasonable that we would get a request from the Administration that says, "Hey, Councilmembers, do you have any constituent issues or any problems that you would like to see on the next bond issuance?" To me, that is what collaboration...

Mr. Rezentes: Yes...I am sorry...

Council Chair Rapozo: Not when you have your list and you come and say, "This is what we want to do," and then we get into this, "No, we do not want that." That is all I am asking.

Mr. Rezentes: We do not have a problem at all doing that. We should do that and we can do that.

Council Chair Rapozo: Okay.

Mr. Rezentes: That is not a problem.

Council Chair Rapozo: Okay, that is what I want to hear.

Mr. Rezentes: For starters, we still have to come up with our list of stuff that...

Council Chair Rapozo: Our list is our list, Wally. It is the Administration and the Council. I think that maybe the Budget & Finance Committee Chair, if it is...I think some of us...I do not need to be there, but somebody needs to and somebody needs to be bringing those concerns of the public to you folks and not just your group every morning and say, "Hey, this is what we think." That is what this amounts to be. At the end of the day, the Council has to approve it.

Mr. Rezentes: Yes.

Council Chair Rapozo: If you get the Council involved early...I can remember when Kaipō Asing was the chair and the discussions would go...Darryl Kaneshiro...they were part of it. I think you can appreciate our concern when we say, "Bond Counsel, really? Are we floating a bond? Really?" Anyway, I think that is all I am saying. If you get the Council in early, and granted a new Council starts in a month or so, the Council should be part of that discussion early on so that when that list comes, there is no fighting. It is not, "Okay, it is the Administration's list and that why we are going to push it. Sorry, Council." Councilmember Hooser.

Councilmember Hooser: Good morning.

Mr. Rezendes: Good morning.

Councilmember Hooser: Along the same lines, as a Councilmember, what I would like to see is a conversation start something to the effect like, "We are considering going out and securing bond funding on these areas," whether it is affordable housing or maybe there are some properties identified for purchase or development or traffic. So you have some general policy areas, and then you work your way down there to specific projects on the list, but you have that broader conversation with the Council earlier, because there is no shortage of needs. Pet projects, I am sure, will be sprinkled around, whether they are highways, schools, or parks. So having that first conversation, I think, would be important. Thank you.

Mr. Rezendes: Sure.

Council Chair Rapozo: Ultimately, it is the Administration's decision of what they want to put on that final list. I want a three hundred million dollar (\$300,000,000) stadium with the dome and one hundred thousand (100,000) seats, but that is not going to happen. At least I want to be able to suggest it. Councilmember Kualii.

Councilmember Kualii: Wally, in your discussion about formulating and narrowing down, I think you used the word "solidifying" this list, you talked about maximizing funds from the State and leveraging SRF funding. In any of that work that still needs to happen working on the list, does the disclosure and/or Bond Counsel...does having them now help with that in any way? Do they play a role in that or only after the list has been narrowed down and the decision, after this Council acts, do they then play a role, Disclosure and Bond Counsel?

Mr. Trask: Mauna Kea Trask, County Attorney, what I recently learned was that you want to engage Bond Counsel and Disclosure Counsel as early in the proceedings as possible, because usually what happens with these things, and it becomes a last-minute rush, so we want to avoid that. We want to chart how this is going to play out, create a critical timeline, and do it really how it best is done now. This is more of a request from the County Attorney's Office because we want to make sure that we understand what is going on through this thing so that we can adequately prepare and build capacity to deal with this. Municipal bond issuances will always be an option; it will always be done by this County and all counties. This is what we have been advised to do and they should be involved in the formulation as early as possible because I think that best informs how many projects can be on. For example, what types of projects are best on it? If you are going to do a certain type of bond issuance, what are appropriate projects

nowadays specifically for that? Really, what has been done by this County in the past, I would not advocate maybe the best way going forward. I want to get this done as soon as possible. I read about this recently and I think you would be provided the best legal services if we engage them early. Again, to be clear for the record, no one is looking at a dome stadium to build or anything like that. People have been scrutinized for their statements made on the floor because the market watches these things. This is a public proceeding. As the Chair always says, millions of people watch this all the time and a lot of those people participate in the market, and municipalities who have not been well-advised or ill-informed have gotten themselves in serious trouble because they were not provided the right guidance. I just want to get the right guidance and provide you that guidance as quickly as possible. As we know, things slowdown in the holidays and all of a sudden they will ramp up again, then we will be in budget. I do not even know if we have enough Special Counsel currently on our yearly procurement that can do this. I may have to see another solicitation, and that will take time and I do not want to put you behind the clock or be held to a clock when we are doing something so important.

Councilmember Kualii: So when you are talking about preparation and having this understanding of not wanting a last minute rush, are you also saying that this twenty-five thousand dollars (\$25,000) for Disclosure Counsel and twenty-five thousand dollars (\$25,000) for Bond Counsel, it is funds that need to be expended so that you can get that preparation and understanding and help with how many can be on the list and what types are on the list? Whether this Council ultimately approves any bond funding or not, this is something that you need to do now and expend now to prepare? It sounds like this is what you are saying.

Mr. Trask: Yes. I think you would be best served moving forward...

Councilmember Kualii: It is prudent.

Mr. Trask: Yes, it is prudent. Thank you.

Councilmember Kualii: Thank you.

Council Chair Rapozo: Any other questions? Councilmember Kagawa.

Councilmember Kagawa: Wally, I know it will be soon or a couple of weeks, but I am just kind of frustrated that we are not able right now just to say what type of important projects like if it is a "need to fix" or a "need to have" project, like maybe getting Ma'alo landfill ready, like, "This is a type of bond that we will be seeking to handle this type of problem so that what our landfill reaches its time and expires, we have another option" or whatever it may be. Whether it is Hanapēpē Bridge that is severely sprawling and cement pieces falling down as we speak—"That is a type of project we are seeking." I am just frustrated that it is like, "We will know in a couple of weeks." I am just afraid that we are leaving it open and not even knowing that we have these urgent, "need to fix" items or "need to have" items and not "nice to have" items, that we cannot just say flat out, "These are our top priorities and this is immediately the attention we are hoping to go." I am just frustrated that we do not know.

Mr. Trask: On that point, I think it is a good point and one of the things that Bond Counsel could assist with is...there are different types of bonds...there is not just one type of bond. There are general obligation bonds, and this is where I start to get ill-informed—I understand generally that you spend them via taxes in the General Fund. There are revenue bonds and utility bonds and certain projects cannot be utility bonds because they are not utility or revenue bonds because we do not create revenue on them. They need to be general obligation. All these types of things are what Bond Counsel can assist you with and Disclosure Counsel can best inform Bond Counsel by helping us prepare that official statement. This is solely a request that I made. This is not a request of anybody else and it is strictly up to strength of some information I just learned and I do not want Kaua'i or its well-meaning officers to...I want them to do the best that they can.

Councilmember Kagawa: I understand what you are saying. Even if it is sewer-related, which we are not briefed too often on sewers, but if it is like to improve Līhu'e Wastewater Treatment Plant so that we do not have any more spills in Kalapakī, this is a slam dunk. But just having, "Oh, we have a number of projects, but we will let you know in a couple of weeks." For me, I think we would have our priorities already listed in these areas, I think something like that could give me a little more comfort.

Mr. Rezendes: I think we are fine with having that type of discussion, the "must haves," like you said; the "guarantee, must haves" because of a critical need. I think for the County Attorney to proceed on the procurement, the funding is needed in order to seek the procurement, and maybe somebody can correct me if I am wrong, but my understanding is that you need the funding to go and procure the services. Maybe there can be an agreement with the County Attorney that he is not ultimately going to engage in a contract until we are proceeding with our side of the projects. At least if he has the funds now, he can go out and start seeking the professional services that he is seeking and not be on the catch-up.

Council Chair Rapozo: Mauna Kea, do you think that the twenty-five thousand dollars (\$25,000) and the twenty-five thousand dollars (\$25,000) are sufficient to carry us through the process? If you do not know then that is fine.

Mr. Trask: I do not know. I want them to continue to assist in post-disclosure requirements because after all of these enforcement actions, the SEC has set-up new websites and public access information venues that the County needs to maintain, according to the bond issuance, depending. Like I said before, the previous Bond Counsel billed thirty-two thousand dollars (\$32,000) over seven (7) years, so I think that is a good spread. I do not anticipate that twenty-five thousand dollars (\$25,000) will be it, but I think it will be well-spent and should be sufficient for a substantial period of time, and of course we will come back to you to seek further funding.

Council Chair Rapozo: The other question is, are we eligible to get reimbursed from bond funds for the legal fees? I am not sure. If you do not know then that is fine. We can look into that.

Mr. Trask:
discussions elsewhere.

I do not know. I prefer to have some of those

Council Chair Rapozo: Okay. Is there anything else that you needed to discuss with us in Executive Session? I think we got the picture...well, I do...it is clear to me. Anyway, my suggestion is to keep the Executive Session items open, but I do not think...is there anyone that needs to go into Executive Session before we vote on these items? Okay, thank you. I will call the meeting back to order. My suggestion is that we go ahead and approve C 2016-236 and C 2016-237. I appreciate what Mauna Kea is saying and it is two (2) parallel discussions. What Mauna Kea is saying is the legal protections that we can receive from doing it right...I am having a little bit of concern if we have done it right in the past and that is why we will keep the Executive Session items open so that we can discuss that. I do not want to take any action on that right now, we will do that when we go into Executive Session. As far as C 2016-236 and C 2016-237, I suggest that we go ahead and approve that. Just because we did that in the past does not mean that we did it right in the past and I want to make sure that we go down the road with some right legal counsel. Further discussion? If not, can we go back to C 2016-236? This is twenty-five thousand dollars (\$25,000) for Special Counsel as Disclosure Counsel.

There being no objections, the meeting was called back to order, and proceeded as follows:

COMMUNICATIONS:

C 2016-236 Communication (10/18/2016) from the County Attorney, requesting approval of its recommendation for authorization to expend funds up to \$25,000.00 to retain Special Counsel to act as Disclosure Counsel for the County of Kaua'i, and related matters: Councilmember Kagawa moved to approve C 2016-236, seconded by Councilmember Kaneshiro.

Council Chair Rapozo: Any further discussion? Any public testimony? Councilmember Hooser.

Councilmember Hooser: I am assuming, but I do not want to assume, that we are going to be putting something in writing to the Administration requesting some kind of briefing on what their plans are at the present moment.

Council Chair Rapozo: Yes. That will happen.

Councilmember Hooser: Thank you.

Council Chair Rapozo: We have public testimony. I will suspend the rules. We are due for a caption break, so I would like to start winding this up. B.C., is it okay if we go an extra ten (10) minutes? Then we will be over for the day, as far as for the open session items.

There being no objections, the rules were suspended to take public testimony.

Ms. Punohu: Aloha. Anne Punohu. I just want to support Councilmember Hooser and Council Chair's comments. I see it as going in two (2)

different directions. I really want to compliment Mauna Kea because that was money well-spent for him to go there and I can see his absolute sincere desire to make sure that he is doing his job as the County Attorney to limit the liability of this Council. When we look at big bond projects like O'ahu and we see the disaster of the rail over there and we see what happens when funding is not done correctly and there is all kinds of *pilikia* that can happen to that, I, as a person in the regular community, can see that what Mauna Kea is saying makes sense. I would be in approval of spending these funds in order to have this Special Counsel; however, there is another issue here, which is exactly what Council Chair Rapozo said. This Council has its own ideas of what should be the priorities and I feel that the Administration and the Council should absolutely be working together on a prioritized list and that nobody should be kept in the dark. It should not be, "Here is our list and that is what we want to do," boom. It should be a together decision of Councilmembers, which gets it really from us, what our desires are and what the community wants since they are our voice. For the Administration as well, they are also hearing what they want, but that list needs to be done together. I am with Council Chair Rapozo that it is actually two (2) separate issues, but as far as what Mauna Kea brought to you this morning, I think he did an excellent job and I agree with what he has stated on his part about prudence. *Mahalo*.

Council Chair Rapozo:

Thank you. Mr. Mickens.

Mr. Mickens:

For the record, Glenn Mickens. Are you Councilmembers all familiar with Kaua'i County Charter Section 3.07(E)? I know Council Chair Rapozo and Councilmember Yukimura are. Ken and I sat here for months and months before Executive Session. If Section 3.07(E) were still in effect now, we would not even be sitting here wasting our time talking about going into the Executive Session because of this bond. It would not happen. You only had one (1) reason to go into Executive Session under Section 3.07(E) and that was for a claim. A claim is outlined in the Charter, period. All of a sudden, the Charter Review Commission gets this thing, puts it on a thing, the Administration did not like it, puts it on the ballot while it got worded wrongly, and it got changed. Now we have eight (8) reasons to go into Executive Session, the same as the State. My point here is that somehow we can go back and change this and make Section 3.07(E) the way it was previously before it got changed. Let the people know that we only had one (1) reason and one (1) reason only to go into that Executive Session, for a claim. We went into thirty-three (33) Executive Sessions for Ernie Pasion, that poor man. It was ridiculous. We would not be doing that if we had Section 3.07(E) in effect. I know I kept on asking Councilmember Yukimura and she kept on saying, "Well, there is probably some other reason." Well, there was no other reason. The Council Charter was most specific on it and nobody...I talked to Ron Kouchi and he said, "Well, there has to be, Glenn." There was no other reason to go into Executive Session. So we made our case and it got worded wrongly for the public to be able to hear it. It was not. If there is any way to be able to go back and put that Charter Section...we would not even have to be discussing this because there is only one (1) reason they would have these Executive Sessions and that is a for a claim. Thank you.

Council Chair Rapozo:

Anyone else wishing to testify? If not, I will call the meeting back to order. Councilmember Yukimura, I am sure you want to answer that one.

There being no further testimony, the meeting was called back to order, and proceeded as follows:

Councilmember Yukimura: Yes, I do. The Council does not go into Executive Session only because of Charter requirements; there are Federal and State laws that require us to do that as well and they are laws that we are required to follow. So we do not have a choice about that.

Council Chair Rapozo: Chapter 92 is the reason we do it. The charter amendment was to come in compliance with State law. I think we have answered that question many times. The State does not give us the option. It does not say, "You can pick your own way to go in." Privacy rights, personnel rights, and medical rights—all of these reasons under the State law prohibits us from having those discussions in the public. That is plain and simple. We had to change the Charter, like we did with this Charter...you see the Civil Defense thing...changing the name of Civil Defense—that is because the State is requiring us to do it. We have to do it. The only mechanism we have is the charter amendment process. If we were in open session to discuss a personnel matter, we would be not only arrested and charged, but also sued.

The motion to approve C 2016-236 was then put, and unanimously carried.

C 2016-237 Communication (10/18/2016) from the County Attorney, requesting approval of its recommendation for authorization to expend funds up to \$25,000.00 to retain Special Counsel to act as Bond Counsel for the County of Kaua'i, and related matters: Councilmember Kagawa moved to approve C 2016-237, seconded by Councilmember Kualii.

Council Chair Rapozo: Any discussion or public testimony?

The motion to approve C 2016-237 was then put, and unanimously carried.

Council Chair Rapozo: Thank you. That concludes the open session of today's agenda. Thank you for coming. We will take a ten (10) minute break and report into the Executive Session chambers. Thank you.

There being no objections, the meeting recessed at 10:39 a.m.

The meeting convened at 10:51 a.m., and proceeded as follows:

Council Chair Rapozo: We are back for a vote to convene into Executive Session. There has been a motion and a second on all nine (9) items. Roll call.

The motion to convene in Executive Session for ES-874, ES-875, ES-876, ES-877, ES-878, ES-879, ES-880, ES-881, and ES-882 was then put, and carried by the following vote:

FOR EXECUTIVE SESSION:	Chock, Hooser, Kagawa, Kaneshiro,	
	Kuali'i, Yukimura, Rapozo	TOTAL – 7*,
AGAINST EXECUTIVE SESSION:	None	TOTAL – 1,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

*(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Kagawa was noted as silent (not present), but shall be recorded as an affirmative vote for the motion).*

Council Chair Rapozo:
Thank you.

Okay. That concludes today's open meeting.

ADJOURNMENT:

There being no further business, the Council Meeting adjourned at 10:52 a.m.

Respectfully submitted,



JADE K. FOUNTAIN-TANIGAWA
County Clerk

:cy